IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

O.P.No.14886 of 1999(V)

PETITIONER:-

MOHAN C. MENON, ADVOCATE,
ST.VINCENT CROSS ROAD, ERNAKULAM.

BY ADV. SRI.K.R.B.KAIMAL

RESPONDENT:-

STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
HIGHER EDUCATION DEPARTMENT,
SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.SANDESH RAJA.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

ORDER ON C.M.P.NO.24086 OF 1999 IN O.P.NO.14886 OF 1999-V

CLOSED.

7/2/2007. Sd/- ANTONY DOMINIC, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1 - TRUE COPY OF THE LETTER NO.23039/J2/94/H.Edn. DATED 28.7.1994 OF THE RESPONDENT ADDRESSED TO THE ADVOCATE GENERAL, ERNAKULAM.

EXT.P2 - TRUE COPY OF LETTER OF THE PETITIONER ADDRESSED TO THE RESPONDENT DATED 27.8.1994.

EXT.P3 - TRUE COPY OF THE LETTER NO.208/94/OS DATED 17.7.1995 OF THE ADVOCATE GENERAL ADDRESSED TO THE RESPONDENT.

EXT.P4 - TRUE COPY OF THE LETTER OF THE PETITIONER ADDRESSED TO THE RESPONDENT DATED 3.8.1995.

EXT.P4(a) - TRUE COPY OF THE BILL ENCLOSED WITH EXT.P4 LETTER BY THE PETITIONER.

EXT.P5 - TRUE COPY OF THE LETTER OF THE PETITIONER ADDRESSED TO THE RESPONDENT DATED 18.5.1998.

EXT.P6 - TRUE COPY OF THE LETTER NO.23039/J2/94/H.Edn. DATED 2.7.98 OF THE RESPONDENT ADDRESSED TO THE PETITIONER.

RESPONDENT'S EXHIBITS: Nil.

- true copy -

Antony Dominic,J.

O.P.No.14886 of 1999-V

Dated, this the 7th day of February, 2007

JUDGMENT

This writ petition has been filed by a former Government Pleader of this Court praying for quashing Exhibit P6 and to sanction and disburse the amount due to him as per Exhibit P4(a) bill with interest at 18% per annum. The claim in respect of which the dispute arose was in relation to a suit filed as O.S. No.208 of 1994 in the Sub Court, Muvattupuzha, filed by Mar Athenaseaus College Association, Kothamangalam. The State Government considered the subject matter to be so important that it chose to entrust the matter with the petitioner to defend the suit on behalf of the Government and this is evident from Exhibit P1. For certain preliminary works, such as drafting of the counter affidavit in the Sub Court, etc., and also towards fee for 20 sittings, the petitioner raised a claim for Rs.17,500/-. The petitioner also has a claim for Rs.9,000/- towards drafting memorandum of Civil Revision Petition (C.R.P.No.2171 of 1994) and sitting fee for three sittings.

2. It is seen that he made claims which remained unanswered and apparently on coming to know of the same, the then Advocate General wrote Exhibit P3 letter dated 17.7.1995 to the Government recommending that the claim raised by the petitioner be settled as it was a reasonable one according to him. It is seen from his letter that there was a discussion at a meeting convened by the Secretary to Government, Higher Education Department on 8.8.1994 in the presence of other higher officials of the Government when the defence to be made by the State in the suit was decided upon. It is stated that in the meeting "it was also tacitly decided that regarding the remuneration for the special work, the Government Pleader may send a formal representation to the Government which can be sanctioned". Proceeding further, the Advocate General had informed the Government that the claim for Rs.7,500/- for the preliminary work and Rs.500/- per sitting raised by the petitioner was reasonable and should be settled. He has also mentioned that the work which was entrusted to the petitioner was an arduous one and consumed much time for its preparation and defence in Court. The other claim made for Rs.9,000/- is also recommended for payment.

3. However, without even giving an advertence to the communication of the Advocate General, referring to the various provisions of the Kerala Government Law Officers (Appointment & Conditions of Service) and Conduct of Cases Rules, 1978, the claim of the petitioner has been negatived by the Government as per Exhibit P6. It is also stated that the proviso to Rule 31(3) enables the Government to fix fee in a special case taking into consideration the arduous nature of the work and the time spent in the preliminary work. It would appear that the Government has thus declined to extend the benefit of the proviso to Rule 31 (3) and on that basis the claim of the petitioner was negatived.

4. There are two claims made by the petitioner as is evident from Exhibits P2 and P4(a). The first one is towards the preliminary work of drafting counter affidavit in the Sub Court, etc. and towards fee for 20 sittings. It is not the normal duty of the Government Pleaders appointed in the High Court to attend the Muvattupuzha Sub Court. It was considering the importance of the issue involved, the Government have decided to specially entrust the matter to the petitioner to defend the case on their behalf. As pointed out by the Advocate General in Exhibit P3, in the meeting held on 8.8.1994 there was a tacit understanding

regarding payment of remuneration for the special work for which a claim was to be raised by the petitioner to be sanctioned by the Government. It was on that basis that the Advocate General has recommended payment of the bill. Further the Advocate General being the best Judge, has confirmed that the work was of arduous nature.

5. In the light of the recommendation of the Advocate General, I see no reason why the claim of the petitioner for Rs.17,500/- made in Exhibit P4(a) should be rejected. Accordingly, I am of the view that the petitioner's claim for Rs.17,500/- (Rupees seventeen thousand and five hundred only) towards preliminary work and sitting fee for twenty sittings in O.S.No.908 of 1994 on the file of Sub Court, Muvattupuzha is liable to be accepted by the Government. As far as the fee for drafting memorandum of Civil Revision Petition and for three sittings is concerned, it is rightly pointed out by the Government Pleader that the work involved is a part of normal duties of a Government Pleader in the High Court and, therefore, it does not entitle him for any special payment. The petitioner is also not in a position to point out any rule or circumstance enabling him to make a claim in this respect. Such being the situation, I am not

inclined to interfere with the decision of the Government in this regard.

6. Accordingly, Exhibit P6 to the extent it negatived the claim of the petitioner for Rs.17,500/- (made in Exhibit P4 [a]) towards preliminary work and sitting fee for 20 sittings in O.S.No.208 of 1994 on the file of Sub Court, Muvattupuzha is quashed and the respondent is directed to make payment of Rs.17,500/- to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as indicated above.

Antony Dominic
Judge

vku/-